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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/863,074	05/21/2001	Brian O'Holloran	CMI 304B	7603

7590 05/21/2003
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EXAMINER

DESANTO, MATTHEW F

ART UNIT PAPER NUMBER

3763

DATE MAILED: 05/21/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/863,074

Applicant(s)

O'HOLLORAN ET AL. *M*

Examiner

Matthew F DeSanto

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 18-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 18-24 and 26 is/are rejected.
- 7) ☒ Claim(s) 25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

1. Applicant's election without traverse of Group I and Species A in Paper No. 6 is acknowledged.
2. Claims 6-17 and 27 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group and Species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: there is no mention of an "outer tube" and an "inner tube", as claimed in the application.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-5, 18-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Donnan (USPN 5935109).

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Donnan discloses a surgical tool with a delivery tube, an inner member within the delivery tube, and a releasable lock connected to the tube, wherein the lock includes outwardly biased arms: (Figures 1-5 and entire reference)

wherein the lock further includes a locking surface formed on fingers extending inwardly from the arms: (Figures 1-5 and entire reference)

wherein the locking surfaces are formed as part of holes on the fingers, and wherein the holes and fingers are sized such that limited or no contact occurs between the locking surfaces and the inner member, when the arms are squeezed towards one another to a fully squeezed position: (Figures 1-5 and entire reference)

wherein the holes and fingers are sized such that frictional contact with the inner member occurs when the arms are squeezed toward one another to a fully squeezed position, so that the inner member may be locked in both the unsqueezed position and the fully squeezed position of the arms: (Figures 1-5 and entire reference)

wherein the locking surfaces are approximately V-shaped. (Figure 5)

6. Claims 1-5, 18-24, 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Wozencroft (USPN 5718688).

Wozencroft discloses a surgical tool with a delivery tube (5), an inner member (2) within the delivery tube, and a releasable lock connected to the tube, wherein the lock includes outwardly biased arms (Ref # 41, 43): (Figures 4, 5 and entire reference)

wherein the lock further includes a locking surface formed on fingers (Ref # 46, 49, 53, 54) extending inwardly from the arms: (Figures 4, 5 and entire reference)

wherein the locking surfaces are formed as part of holes on the fingers, and wherein the holes and fingers are sized such that limited or no contact occurs between the locking surfaces and the inner member, when the arms are squeezed towards one another to a fully squeezed position: (Figures 4, 5 and entire reference)

wherein the holes and fingers are sized such that frictional contact with the inner member occurs when the arms are squeezed toward one another to a fully squeezed position, so that the inner member may be locked in both the unsqueezed position and the fully squeezed position of the arms: (Figures 4, 5 and entire reference)

wherein the locking surfaces are approximately V-shaped, and wherein the tool further comprises a spring for biasing the lock. (Figures 4, 5 and entire reference)

7. Claims 1-5 are rejected under 35 U.S.C. 102(e) as being anticipated by Ostrander et al. (USPN 5984378).

Ostrander et al. discloses an inner tube, an outer tube and a lock on the outer tube, and wherein the lock includes arms (ref # 88) biased outwardly relative to the inner member, and the arms includes at least one finger (ref # 92) extending inwardly toward the inner member, and the finger has a hole (ref # 98) oversized relative to the inner member and through which the inner membrane extends, so that frictional force may be exerted between the inner member and the finger when the arm is allowed to move outwardly to an unsqueezed position, and so that the frictional forces may be released by squeezing the arm towards the inner member.

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Allowable Subject Matter

8. Claim 25 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F DeSanto whose telephone number is 1-703-305-3292. The examiner can normally be reached on Monday-Friday 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 1-703-308-3552. The fax phone numbers for the organization where this application or proceeding is assigned are 1-703-872-9302 for regular communications and 1-703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 1-703-308-0858.



Matthew DeSanto
Art Unit 3763
May 19, 2003



BRIAN L. CASLER
SUPERVISORY PATENT EXAMINER
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